

810-3-71-.01 Employers Required to Withhold Tax from Wages.

(1) Each calendar quarter every withholding agent shall deduct, withhold, and pay over to the Department of Revenue on or before the last day of the month following the close of each quarterly period a tax, computed as indicated in Rule 810-3-71-.02 on the compensation paid within each quarter for personal services of covered employees. For employers required to submit payment monthly see Rule 810-3-74-.01.

(2) All employers or withholding tax agents are required to register with the Alabama Department of Revenue prior to withholding Alabama income tax. Employers must register online for an Alabama withholding tax account number via the Department's website.

(3) Similar to the provisions of 26 U.S.C § 3504, the Alabama Department of Revenue also allows common-pay agents to register with the Department and withhold Alabama income tax on behalf of employers or other withholding tax agents. Common-pay agents are required by 26 U.S.C § 3504 to make written request to the Internal Revenue Service for permission to act as a common-pay agent.

(4) Alabama income tax must be withheld on the total wages subject to Alabama incometax.

(5) An employer who is a resident of Alabama is required to withhold tax from the wages of his or her employees who are residents of Alabama, regardless of whether the wages are earned in Alabama or outside the State; except that if the employer is withholding tax for the state in which the employee is working, the employer is not required to withhold tax for Alabama.

(6) An employer who is a resident of Alabama is required to withhold tax from the wages of employees who are not residents of Alabama only to the extent that the wages are earned in Alabama. In other words, a nonresident employee of an Alabama employer should have Alabama income tax withheld only on wages earned in Alabama.

(7) An employer who is not a resident of Alabama is required to withhold tax from the wages of employees to the extent that such wages are earned in Alabama, whether the employee is a resident or a nonresident of the State. A nonresident employer is not required to withhold Alabama income tax on wages paid for services performed outside of Alabama, whether such wages are paid to a resident or to a nonresident of Alabama.

(8) Public Law 91-569 provides that the withholding tax of an employee of a water or air carrier that does not earn more than 50% of their compensation from said carrier in any one state shall be required only for the State of the employee's

residence.

(9) Beginning July 6, 1990, the Amtrack Reauthorization and Improvement Act (P.L. 101-322) provides that no part of the compensation paid to an employee of an interstate railroad subject to the jurisdiction of the Interstate Commerce Commission (ICC) may be subject to the income tax laws of any state except the state of the employee's residence when such employee performs regularly assigned duties in more than one state. The bill also precludes the taxation of compensation paid by an interstate motor carrier subject to the jurisdiction of the ICC or to an employee of a motor private carrier performing services in two or more states except by the state of the employee's residence. For purposes of the motor carrier, "employee" is as defined in §204 of the Motor Carrier Act of 1984 (40 U.S.C. 2503).

(10) The burden and duty is placed upon the employer to determine the place of residence of each employee, and to determine the exact part of each employee's earnings which is attributable to the services performed within Alabama and to apportion such earnings accordingly for the purpose of withholding the tax.

(11) An employer and employee may agree to the withholding of Alabama income tax in addition to the amounts specified in this rule. The employee may request such withholding by proper indication on Form A-4, or any other means acceptable to the employer. If the employer withholds such additional amounts from the employee's wages, such action constitutes agreement to withhold the additional amounts, and to submit such additional amounts at the same time and in the same manner that other withholding is submitted. An agreement for additional withholding continues in effect until canceled or modified by the employer and/or employee.

(12) Any person paying winnings subject to withholding is required to withhold income tax from such winnings in the same manner as if the person receiving such winnings was an employee and the payer was an employer.

Authors: Ewell Berry, Ann F. Winborne, CPA, Kathleen Abrams and Neal Hearn, CPA.

Authority: Section s 40-2A-7(a)(5), 40-18-70, 40-18-91, 41-10-44.8(a)(2), 41-10-44.8(b), Code of Alabama 1975.

History: Adopted September 30, 1982.
Amended September 7, 1988; amended February 8, 1989, filed with LRS March 20, 1989, effective April 24, 1989.
Amended: Filed August 26, 1994, effective September 30, 1994.
Amended: Filed May 3, 2000, effective June 7, 2000.
Amended: Filed December 4, 2017, effective January 18, 2018.